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APR 16 2007

OFFICE OF PETITIONS

In re Application of	:	
Slusher et al.	:	
Application No. 09/866,961	:	DECISION ON APPLICATION
Filed: May 30, 2001	:	FOR
Atty Docket No. 20595.160	:	PATENT TERM ADJUSTMENT
	:	

This is a decision on the "Application for Patent Term Adjustment," filed March 29, 2007. Applicant requests correction of the patent term adjustment from six hundred twenty-two (622) days to one thousand one hundred thirty-six (1136) days partly on the basis of the Office taking in excess of three years to issue the patent¹.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the

¹ Applicants base this calculation on the projected issue date.

request. Patentees may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

The application for patent term adjustment is GRANTED to the extent indicated herein.

The correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is seven hundred three (**703**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 29, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 622 days. Applicants timely filed the instant application for patent term adjustment². Applicants dispute the reduction of 81 days for applicant delay in pursuant to 37 C.F.R. § 1.704(b).

The application history has been reviewed, and it is determined that petitioner's arguments are persuasive. The response filed on July 19, 2004 was filed with a request for withdrawal of Office actions. By decision mailed January 19, 2005, (in response to a request for reconsideration), the request for withdrawal of Office actions was granted. In view of the basis for this decision, it is appropriate to remove the reduction of 81 days.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is seven hundred three (703) days (including 0 days of applicant delay).

Petitioner is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C.

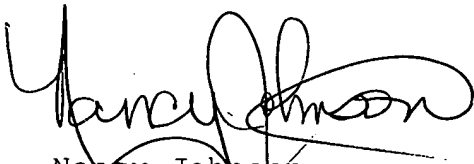
² Office records show that the Issue Fee payment was also received on March 29, 2007.

154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized flourish extending from the end of the name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Day : Wednesday

PALM INTRANET

Date: 4/11/2007

Time: 17:14:34

PTA Calculations for Application: 09/866961

Application Filing Date:	05/30/2001	PTO Delay (PTO):	703
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	81
Post-Issue Petitions:	0	Total PTA (days):	703
PTO Delay Adjustment:	81		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
70	04/11/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	81		
57	12/29/2006	MAIL NOTICE OF ALLOWANCE			
56	12/27/2006	ISSUE REVISION COMPLETED			
55	12/27/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
54	12/26/2006	NOTICE OF ALLOWABILITY			
53	12/26/2006	CASE DOCKETED TO EXAMINER IN GAU			
52	10/23/2006	DATE FORWARDED TO EXAMINER			
51	10/16/2006	RESPONSE AFTER NON-FINAL ACTION			
50	07/26/2006	MAIL NOTICE OF WITHDRAWN ACTION			
49	07/26/2006	MAIL NON-FINAL REJECTION	614		42
48	07/20/2006	NON-FINAL REJECTION			
47	07/06/2006	LETTER WITHDRAWING / VACATING OFFICE ACTION			
46	05/15/2006	CORRESPONDENCE ADDRESS CHANGE			
45	11/29/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
44	08/30/2001	REFERENCE CAPTURE ON IDS			
43	11/21/2005	DATE FORWARDED TO EXAMINER			
42	07/19/2004	AMENDMENT AFTER FINAL REJECTION		81	24
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40	11/10/2005	NOTICE OF RESCINDED ABANDONMENT IN TCS			
39	11/10/2005	CASE DOCKETED TO EXAMINER IN GAU			
38	01/19/2005	PETITION DECISION - GRANTED			
37	11/10/2004	PETITION ENTERED			
36	11/10/2004	WORKFLOW INCOMING PETITION IFW			

35	09/21/2004	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
34	09/17/2004	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
33	09/10/2004	PETITION DECISION - DENIED			
32	07/19/2004	PETITION ENTERED			
31	08/09/2004	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
30	08/05/2004	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
29	07/19/2004	WORKFLOW INCOMING AMENDMENT IFW			
28	07/07/2004	MAIL ADVISORY ACTION (PTOL - 303)			
27	07/06/2004	ADVISORY ACTION (PTOL-303)			
26	04/19/2004	DATE FORWARDED TO EXAMINER			
25	04/08/2004	AMENDMENT AFTER FINAL REJECTION			
24	01/29/2004	MAIL FINAL REJECTION (PTOL - 326)			
23	01/26/2004	FINAL REJECTION			
22	11/19/2003	DATE FORWARDED TO EXAMINER			
21	05/12/2003	RESPONSE AFTER NON-FINAL ACTION			
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14	11/21/2002	DATE FORWARDED TO EXAMINER			
13	11/12/2002	RESPONSE TO ELECTION / RESTRICTION FILED			
12	10/23/2002	MAIL RESTRICTION REQUIREMENT	85		-1
11	10/01/2002	REQUIREMENT FOR RESTRICTION / ELECTION			
10	05/30/2001	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
9	03/28/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	08/30/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	08/21/2001	CASE DOCKETED TO EXAMINER IN GAU			
6	08/16/2001	APPLICATION DISPATCHED FROM OIPE			
5	07/26/2001	APPLICATION IS NOW COMPLETE			
4	07/26/2001	NOTICE MAILED--APPLICATION INCOMPLETE--			

		FILING DATE ASSIGNED			
3	07/25/2001	CORRESPONDENCE ADDRESS CHANGE			
2	06/07/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/30/2001	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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